

COPY

in F49

Opinion

July 14, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Mr. John O. Morton, Commissioner  
Public Works and Highways  
Concord, New Hampshire

Re: CONCORD LS 1871  
City Owned Land

Dear Commissioner Morton:

This will acknowledge receipt of your letter of July 9 to Attorney General Louis G. Wyman wherein you discussed the City of Concord's allegation that the city had intended to use for playground purposes the land taken by the State in May of 1955.

You mentioned the fact that your Department is of the opinion that the city's right to appeal from the award made at that time has long since passed. We are in agreement with this view.

RSA 233:17, the statute in effect at the time of the taking, provides:

"Appeal of Assessment. Any owner of land or other property who has not accepted payment of the sum tendered and who is aggrieved by the decision of the commission in the assessment of damages may appeal therefrom to the superior court for the county in which such land or other property is situate by petition within sixty days after the certificate of tender has been filed with the secretary of state, and not thereafter, and the court shall assess the damages by jury, or by the court without the jury, and award costs to the prevailing party."

C O P Y

Commissioner John O. Morton -- 2.

July 14, 1958

The language of the statute is very clear that no action may be brought after sixty days from the filing of the certificate of tender. In this instance the certificate of tender was filed on May 4, 1955 and the City of Concord lost its right of appeal sixty days after that date.

The statute was amended in 1957 and now provides:

"RSA 233:17 (Supp) "Appeal of Assessment. Any owner of land or other property who has not accepted payment of the sum tendered and who is aggrieved by the decision of the commission in the assessment of damages may appeal therefrom to the superior court for the county in which such land or other property is situate by petition within sixty days after the certificate of tender has been filed with the secretary of state, and not thereafter, unless for good cause shown the superior court may grant the owner an additional sixty days within which to appeal, but in no event shall the time for appeal be more than one hundred and twenty days after the certificate of tender has been filed with the secretary of state, and the court shall assess the damages by jury, or by the court without the jury, and award costs to the prevailing party."

The amendment became effective August 2, 1957, about two years and three months after the certificate of tender was filed. This amendment had no retroactive effect. In any event, as amended, the statute prohibits the entering of an appeal after one hundred and twenty days from the filing of the certificate of tender.

The amendment does not grant to any State official the discretionary right of waiving the sixty day statute of limitation but merely provides that the Superior Court, "for good cause shown", may grant a landowner an additional sixty days in which to enter an appeal.

Very truly yours,

Jarlath M. Slattery  
Assistant Attorney General

JMS:w